The Singer Company, Education Division, Career Systems, San Jose Job Corps Center *and* Office and Professional Employees Union, Local 29. Case 32-CA-1830

June 30, 1981

DECISION AND ORDER

On April 30, 1980, Administrative Law Judge Richard D. Taplitz issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The Administrative Law Judge found, and we agree, that the employees here engaged in a protest solely over the promotion of Smith to the position of supervisor of residential living, and that other reasons advanced for the protest were merely make-weight. We further find that the position in question did not have a sufficiently direct impact on employees' working conditions to bring the employee protest concerning this supervisory promotion within the protections of the Act. Compare *Puerto Rico Food Products Corp., Tradewinds Food, Inc. and Island Can Corp.*, 242 NLRB 899 (1979), in which a sufficient nexus did exist. Member Zimmerman finds that, under any view of the applicable law, the supervisory position in question did not have a sufficiently direct impact on working conditions. In view of our finding herein, we need not consider whether the additional grounds relied on by the Administrative Law Judge would render the protest unprotected.

Chairman Fanning finds it unnecessary to consider whether the protest otherwise would have been protected because he would find, in agreement with the Administrative Law Judge, that the employees lost the protection of the Act when they invited Jobs Corps enrollees to leave classes and join in their protest.

DECISION

STATEMENT OF THE CASE

RICHARD D. TAPLITZ, Administrative Law Judge: This case was heard before me at San Jose, California, on November 20, 1979. The charge and amended charge were filed, respectively, on May 31 and July 16, 1979, by Office and Professional Employees Union, Local 29, herein called the Union. The complaint issued on July 23, 1979, alleging that The Singer Company, Education Division, Career Systems, San Jose Job Corps Center, herein called Respondent, violated Section 8(a)(1) of the National Labor Relations Act, as amended.

Issue

The primary issue is whether Respondent, a contractor operating a Federal Job Corps Center, violated Section 8(a)(1) of the Act by suspending for 5 days without pay six resident advisors and a security officer because they encouraged Job Corps students to boycott classes and to participate in a demonstration against Respondent.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

Upon the entire record[1] of the case and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a New Jersey corporation, maintains an office and place of business in San Jose, California, where it is engaged in the operation of a residential Job Corps Center. During the year immediately preceding issuance of complaint Respondent performed services valued in excess of $50,000 for the United States Department of Labor. The question of whether or not the Board should assert jurisdiction over Respondent was fully litigated in Case 20-RC-14178 (subsequently designated Case 32-RC-628). On April 30, 1979, the Acting Regional Director for Region 32 of the Board certified the Union as the collective-bargaining representative of Respondent's resident advisors (referred to as RAs) at its Job Corps Center in San Jose, California.[2] That certification followed after a telegraphic order from the Board dated March 7, 1979, which read in part:

> Re: The Singer Co., Education Div., Career Systems, San Jose Job Corps Center, 20-RC-14178. Having duly considered the entire record including the Employer's request for review and the brief of the Secy of Labor as *amicus curiae*, the Board hereby affirms the Regnl Dir's Decision and Direction of Election finding that the Employer does not share the Department of Labor's exemption from the Act. *The Singer Co., Education Div., Career Systems, Detroit Job Corps Center*, 240 NLRB 965 (1979).

[1] Errors in the transcript have been noted and corrected.

[2] The bargaining unit was:

> All full-time and regular part-time advisors I & II employed by the Employer at its Job Corps Center in San Jose, California; excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

As the Board has resolved the question of jurisdiction, I find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.[3]

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Background*

Pursuant to the provisions of the Comprehensive Employment and Training Act of 1973, as amended[4] the United States Department of Labor (D.O.L.) has established a Job Corps program.[5] Job Corps Centers have been established at a number of locations throughout the United States. The program is designed to give educational and vocational training and related support services to economically disadvantaged youths aged 16 through 21.

Respondent has contracted to operate 11 Job Corps Centers for the D.O.L. at various locations. One of those Job Corps Centers is located in San Jose, California, and that is the situs of the dispute in the instant case.

The San Jose Job Corps Center is a residential facility in which approximately 300 corpsmembers (students) live in resident dormitories and are given academic and vocational training as well as support services. The typical corpsmember is about 17-1/2 or 18 years old, comes from an economically or socially deprived background, and is usually an unemployable high school dropout. Respondent does not select the people who will become corpsmembers. Males are selected by the California Economic Development Department and females by a community organization known as Women in Community Service. Under D.O.L. regulations, corpsmembers are not considered Federal employees. As described by resident advisor Laura Magdaleno, the function of the Jobs Corps program is to prepare the corpsmen for outside life, to give them the skills they need to survive.

Respondent provides some of the instruction to corpsmembers at the Center[6] and subcontracts to various public and private schools in the area for most of the vocational training. The Center is unusual in that it is located in an urban setting near a residential neighborhood. There has been opposition to having the Center at that location and a group of local land owners known as the Campus Community Association has made an effort to have the zoning laws changed to prevent the Center from operating in that area. The Center directors have attempted to keep a low profile and to avoid bad publicity that would give the Campus Community Association ammunition that could hurt the Center.

Respondent maintains five resident dormitories at the Center. Respondent employs resident advisors, known as RAs, to provide for the corpsmembers' needs in the dormitories. The RAs see to it that the corpsmembers perform their assigned duties, keep discipline in the dormitories, involve themselves with supply and maintenance matters, and do such things as control disputes between corpsmembers. They work in three shifts with six RAs in the swing shift from 3 p.m. to midnight; five RAs in a night shift from 11:30 p.m. to 8:30 a.m.; and a number of RAs on a weekend shift. The RAs report to a senior residential advisor[7] who in turn reports to a supervisor of residential living. The supervisor of residential living dealt both with the senior residential advisor and with the RAs. The supervisor of residential living informed the RAs of the status and problems of corpsmembers, and of things to be looked for and maintained in the dormitories. About every other day the supervisor of residential living met with the RAs and the senior residential advisor to discuss such problems as the use of drugs in the dormitories and the activities that were going on. She told them to do such things as maintain the yard and to look out for particular problems. She approved or denied special arrangements with RA schedules and she informed the RAs of new procedures and rules. The RAs spoke to her about maintenance and supply problems if the senior residential advisor could not solve the problem.

As is indicated above, on April 30, 1979, the Union was certified as the collective-bargaining representative of the RAs.

B. *The Events Leading to the Demonstration*

The six RAs who are on the swing shift were Vince Doherty, Gail Harris, Tabblair Hope, Raul Lugo, Laura Magdaleno, and Steve Padilla. On May 16, 1979, all six of the RAs met with senior residential advisor Al Noley in Noley's office. Noley told them that he had applied for the position of supervisor of residential living but that the job had been given to Mike Smith. That position was open because Mary Reber who had held that job was given a promotion to another position.

That evening after their shift was over all of the swing shift RAs except for Doherty met at the home of RA Hope. Robert O'Brien, a security officer employed by Respondent, also attended that meeting. In the meeting they discussed their displeasure with Smith being named the supervisor of residential living instead of Noley. There was talk about Noley working there for a long time, his familiarity with procedures, and his rapport with RAs and corpsmembers. From there the discussion became a generalized gripe session. There was mention of uneven enforcement of rules against corpsmembers; a discussion of the fact that RA Hope had been asked to

[3] Respondent argues in its brief that the Board should not assert jurisdiction. However, as I am bound by the Board's prior determination, that argument must be addressed to the Board or higher authority.

[4] P. L. 93-203, 87 Stat. 839.

[5] The D.O.L. has published rules and regulations relating to the establishment, funding, operation, and management of Job Corps Centers. Fed. Reg., vol. 40, number 211 (October 31, 1975).

[6] Unless otherwise specified the Center refers to Respondent's Job Corps Center in San Jose.

[7] RA Magdaleno credibly testified to the duties of senior residential advisor Noley as follows:

> To inform us of the things that were happening there around the Center. If there were any special things that had to be done, any special things we had to look for. He would inform us about corpsmembers, their status. If he saw any problems with any of them. He just kind of generally ran the meetings we had.

resign and that she believed she was being picked on; there was talk of RA Magdaleno being hired because she was Hispanic even though she did not have the qualifications; there was a discussion of the lack of a future that RAs had with Respondent; there was a discussion of such things as the lack of supplies to do the work, the lack of maintenance, the existence of plugged toilets, and money being spent on unnecessary things; and there was talk about an RA's belief that he did not get a promotion because he was Hispanic. The participants at the meetings decided that the next day they would speak to Center Director Kenneth Dugan about the supervisory appointment.[8]

At about 3:15 p.m., on May 17, 1979, Center Director Dugan met with the six RAs in his office. The RAs expressed concern that Smith was appointed supervisor of residential living rather than Noley. Dugan said that he thought Smith was better qualified but that as it was a personnel matter and as neither Smith nor Noley were there, he did not feel at liberty to discuss it. RA Harris asked a question relating to why she had been passed over for a time for promotion from resident advisor I to resident advisor II. She also mentioned something about her being passed over because she was black. Dugan said that qualification was the only criteria. One of the RAs said something about there being no black supervisors. Dugan replied by reading off a list of several black supervisors who were working for Respondent. Magdaleno asked if she would be considered for an RA II position and Dugan replied that she would be considered. In the course of the meeting Dugan told the RAs that Respondent did not hire because of race but that it did look for a bilingual RA staff because of the large number of Hispanic corpsmembers.[9] The meeting ended with Dugan thanking the RAs for coming and expressing their concerns. He invited them to come back if they wanted to chat some more.

Shortly after the meeting with Dugan the six swing shift RAs met among themselves in the security office. They discussed their dissatisfaction with the answers that Dugan had given them and they decided to hold a demonstration the following day. They also decided to invite the corpsmembers to get up a list of their own grievances and to participate in the RAs' demonstration. The demonstration was planned to last about an hour and to start at 8 a.m. on May 18. There was a discussion about telling corpsmembers who had tests to take to take those tests rather than participating in the demonstration. Classes for the corpsmembers were held from 8 a.m. to 4 p.m. so that corpsmembers who participated in the demonstration would have to skip some of their classes. They discussed the demonstration as being a sit-in.[10]

At or about 4 p.m. that day the RAs went to the various dormitories and told the corpsmembers about the planned demonstration. RA Magdaleno personally went to one dormitory and spoke to about eight corpsmembers. She told them that the RAs were dissatisfied with Respondent's decision with regard to filling the position of supervisor of residential living and that they were going to have a demonstration the next morning. She invited them to get their own grievances together and join in the demonstration. She also told them that it would be completely organized, that they should keep close together, that it would last for an hour, and that anyone who had tests should go and take the tests.

C. The Demonstration and the Discipline

About 7:30 a.m., on May 18, about 240 corpsmembers gathered in front of their dorms. At or about 8:15 a.m. the swing shift RAs led the corpsmembers to dormitory No. 201. The six swing shift RAs and security officer O'Brien mingled with the corpsmembers and kept them in an organized group. RA Doherty led the entire group in chanting something to the effect that people united—people will survive. All of the swing shift RAs participated in the chanting. The demonstration lasted for about an hour and a half. The 240 corpsmembers who participated did not attend their scheduled classes until later that day.

During the demonstration Peter Gregerson, Respondent's deputy director for education and training, spoke to Security Supervisor Troy Haynie who told him that at that point things were under control. Gregerson saw Ron Lloyd, who was a member of the student government, participating in the demonstration and he asked Lloyd about the demonstration. Lloyd told him that they were concerned about the fact that Noley did not get a promotion, about the RAs' pay, and about other grievances. Gregerson asked Lloyd whether that was a student government function and Lloyd said that it was not. After talking to some other student government representatives Lloyd addressed the demonstrators and told them that a meeting was scheduled with Dugan and that they should return to their classes. The demonstrators booed Lloyd. RAs Hope and Doherty quieted the students. Doherty told them that their action was having results and Hope told them that she was proud of the students.

During the course of the demonstration a camera crew from Channel 11 in San Jose came on the scene and spoke to Dugan.

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[8] Magdaleno, the only witness to testify on behalf of the General Counsel, averred:

> We discussed going into Ken Dugan's office and taking him up on his open-door policy and discussing with him how dissatisfied we were with the decision of the person that filled the position of supervisor, and that we would go in there and talk to him about that.

[9] These findings are based on the testimony of Dugan. The only other witness to testify concerning this meeting was RA Laura Magdaleno. Magdaleno testified that a number of other topics were discussed at that meeting including the lack of supplies, broken toilets, inconsistency of rules applied to corpsmembers, and various other complaints. An affidavit that Magdaleno gave to the General Counsel which referred to that meeting did not mention many of those items. In addition, Magdaleno testified that at the end of the May 16 meeting the employees decided to talk to Dugan about the supervisory appointment. During that part of her testimony she did not refer to any decision to talk to him about other matters. Dugan was a credible witness who appeared to have a very good memory. I believe that his recollection of the incident was more accurate than Magdaleno's and I credit Dugan.

[10] RA Magdaleno, who was the only witness to testify about this discussion, averred: "We discussed our demonstration as being a sit-in, just sitting there in front of 201." She averred that they planned for the RAs and the corpsmembers who did not have tests to demonstrate together.

At or about 9:30 a.m., Dugan and Gregerson met with Lloyd and about seven other student representatives in the conference room of building 201. During the discussion RA Doherty stuck his head in the door and asked one of the students if they had the RAs' grievances. Most of the discussion related to the decision to give Smith rather than Noley the supervisory job. There was also talk about the physical facilities such as the gym and the pool as well as matters relating to maintenance, supplies, and discipline.

Sometime later that morning Gregerson met with a large number of corpsmembers in an assembly in the cafeteria. RAs Hope, Lugo, Doherty, and Magdaleno were also present. The corpsmembers conducted that meeting. Corpsmember Lloyd told the others what had happened with the discussion with Dugan shortly before. Doherty addressed the group and said that he was proud of the way the students had conducted themselves and that this was not the first nor the last time that the people would speak out.

At or about 1 p.m. student representatives met again with Dugan and they discussed the subjects that had been raised at the morning meeting.

At or about 2:45 p.m., Gregerson met with all of the swing shift RAs except for Harris in the health-ed classroom. Security Officer O'Brien, who participated in the demonstration, was also present. There was a discussion about the promotion of RAs and RA Lugo complained that he had not received word about a promotion to the San Diego Job Corps Center. Gregerson replied that he did not know anything about it. RA Doherty said that they had discussed with the corpsmembers concerns about the condition of dorms and getting supplies and the uniting of those grievances in the form of a demonstration. There was talk about the boycotting of the classes. Gregerson asked whether they wanted to meet with Dugan and the RAs said that they did not.

About 4 p.m. that day Dugan called the RAs' union representative, Nancy Gaschott, and asked her whether she knew anythihg about the demonstration and the RAs' participation in it. Gaschott said that she was not really aware of it but that she had heard some rumors about a problem with the appointment of a supervisor.

The demonstration was held on Friday, May 18, 1979. Dugan was out of town on a business trip the following Monday through Wednesday. When he returned to the Center on Thursday, May 24, 1979, he discussed the situation with Gregerson. Gregerson had personally observed RAs Doherty, Harris, Hope, Lugo, Magdaleno, and Padilla as well as Security Officer O'Brien at the demonstration. He told Dugan that the RAs had manipulated the students to stay out of class and that discipline was warranted. From all of the information he received, Dugan concluded that the six RAs and O'Brien had encouraged the students to participate in the demonstration and boycott. He decided to suspend the swing shift RAs and O'Brien for encouraging the corpsmembers to boycott and demonstrate. The six swing shift RAs and O'Brien were given a layoff without pay for 5 working days from Saturday, May 26 until Sunday, June 3, 1979, and were sent copies of the following letter:

> This is to inform you that effective immediately, you are suspended from work for the period of five (5) working days starting immediately, Saturday, May 26 until Sunday, June 3, 1979.
>
> Your actions last Friday were nothing short of gross misconduct. You did in fact, manipulate young Corpsmembers into misconduct and rule violation to further your own personal attitudes and objectives. Not only are these actions a violation of acceptable conduct, they may be a violation of Federal Law. The Department of Labor/Job Corps has already been informed of your actions.
>
> Upon your hire at this Center, you entered into an employment contract to which you certified that "Any employee who engages in any disruptive or other conduct which reflects unfavorably on the Center. . . . is subject to the provisions of the disciplinary procedure including summary dismissal."
>
> I wish to make it perfectly clear that any further disruptive behavior on your part, or violation of rules, policies, standards of conduct, etc., will be dealt with severely leading to termination. This Center views this kind of behavior as totally unjustified.
>
> During your suspension you are not to involve yourself with the Center or be part of any action of a disruptive nature to the Corpsmembers, staff or Center operations. You will be expected to report for work Monday, June 4, 1979, at your normal time.

Dugan testified as follows:

> The basis for the suspension was the resident advisors encouraging the students to boycott and demonstrate and what I felt was an unprofessional behavior and a danger, a grave danger, not only to the Corpsmembers but to the Center in total, and there was a possible riot situation at hand.

D. *Analysis and Conclusions*

The six RAs and the security officer were given 5-day suspensions without pay because they involved the corpsmembers in the demonstration and boycott of classes.[11] Consideration must be given to the question of whether the RAs' own participation in the demonstration was protected and if so whether their inducement of the corpsmembers to participate went beyond the scope of that protection.

The General Counsel contends that the demonstration was planned and carried out for two purposes. The first was to protest the appointment of Smith rather than Noley as supervisor of residential living. The second was to protest a number of grievances which included such diverse matters as the inability to obtain supplies and the existence of stopped-up toilets. The evidence, when

[11] This finding is based on the testimony of Dugan. The General Counsel does not contend that there was any other reason for the discipline and in her brief she states that the only issue presented related to the invitation the residential advisors gave to the corpsmembers to join them in a demonstration and boycott and their engaging in that activity together.

viewed as a whole, does not support the General Counsel's contention that the second reason was a motivating cause of the demonstration. On May 16 Noley told the RAs that he had been passed over for the supervisory position and that it was being given to Smith. The same day all of the RAs except for Doherty met with Security Officer O'Brien. They discussed a number of matters but there was only one topic that they decided to discuss with Dugan the following day. That involved the supervisory question. The credited testimony relating to the meeting on May 17 with the RAs and Dugan establishes that the RAs' primary concern was with the supervisory issue. Later on May 17, when Magdaleno invited the corpsmembers to participate in the demonstration she told them that the RAs were dissatisfied with the decision relating to filling the position of supervisor of residential living and that they were going to demonstrate.

The RAs may have had a number of half-thought-out grievances against Respondent but I do not believe that any of them other than the supervisory issue was causally connected to the demonstration. They were told of the supervisory problem and they reacted to it. I believe that all of the other alleged grievances were merely make-weights and were not causally related to the demonstration. The question is squarely raised whether the RAs had a protected right to protest the selection of a supervisor.

In *Puerto Rico Food Products Corp.*, 242 NLRB 716 (1979),[12] the Board held:

> Whether concerted actions by employees to protest an employer's selection or termination of a supervisor fall within the purview of Section 7 of the Act depends on the facts of each case. In this regard the Board has consistently held that where facts establish that the identity and capability of the supervisor involved has a direct impact on the employees' own job interests they are legitimately concerned with his identity and thereby have a protected right to protest his termination.[4]

[4] *Dobbs House, Inc.*, 135 NLRB 885, 888 (1962), enforcement denied 325 F.2d 531 (5th Cir. 1963); see also *Kelso Marine, Inc.*, 199 NLRB 7 (1972); *Plastilite Corporation*, 153 NLRB 180 (1965), modified on other grounds 375, F.2d 343 (8th Cir. 1967); *Clever-Brooks Manufacturing Corporation*, 120 NLRB 1135 (1958), enforcement denied 264 F.2d 637 (7th Cir. 1959); *Ace Handle Corporation*, 100 NLRB 1279 (1952).

The Board held that the key question was whether the employees were legitimately concerned about the impact of the selection of the supervisor on their own working conditions. In that case a violation was found because the employees had a genuine interest in the continued employment of a supervisor who had exhibited concern about their welfare and had counseled them on matters directly bearing on their employment relationship.

In the instant case the employees wanted Noley to be the supervisor. They believed that Noley was more familiar than Smith with their procedures and that Noley had rapport with the RAs and the corpsmembers. As the supervisor of residential living, Noley would have made arrangements concerning the RAs schedules and times off. He would have discussed problems concerning corpsmembers with them and he would have established new rules and procedures and helped resolve problems such as supply. All of those matters could have a direct impact on the RAs' own working conditions.[13]

There is, however, a critical factual distinction between the situations in the *Puerto Rico Food Products* line of cases and the instant case. In the *Puerto Rico Food Products* line of cases, employees who did not have any collective-bargaining representative took direct action relating to the retention or dismissal of a company supervisor. There were no collective-bargaining concepts to be considered. In the instant case the RAs had selected a collective-bargaining representative and the Board had certified that representative. Respondent and the Union had the mutual obligation to bargain with each other. In such circumstances both the employer and the union have the right to select their own representatives free from interference by the other side. If either a company or a union could control the selection of representatives by the other side there could be no meaningful collective bargaining. Instead of a dialogue the party who controlled the selection of the representative for the other side would merely be talking to itself. Section 8(b)(1)(B) of the Act provides that it is an unfair labor practice for a labor organization or its agents to restrain or coerce an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances. See *Laborers' International Union of North America, AFL-CIO (International Builders of Florida, Inc.)*, 204 NLRB 357, enfd. 505 F.2d 192 (D.C. Cir, 1974); *American Broadcasting Companies Inc. Writers Guild of America, West, Inc., et al.* v 437 U.S. 411 (1978). A serious argument could be made that if the Union had called the demonstration and work stoppage in an attempt to control the selection of the supervisor of residential living, the Union would have violated Section 8(b)(1)(B) of the Act.[14] That section applies only to labor organizations and their agents and does not apply to employees who are acting other than as agents for the union. The employees side-stepped their Union in this case and acted on their own. It appears that they did not even inform the Union what they were going to do.[15]

[12] See also *Abilities and Goodwill, Inc.*, 241 NLRB 27, enforcement denied 612 F.2d 6 (1st Cir. 1979).

[13] Indeed, it is difficult to see how any supervisor who had direct contact with employees could do other than have a direct impact on employees' working conditions.

[14] The full duties of the supervisor of residential living were not spelled out in the record. However, it does appear that the person holding that position directed the work of the RAs and made decisions concerning their schedules. Both Respondent and the RAs appeared to look on that position as a supervisory one. As the supervisor of residential living made decisions with regard to the work and scheduling of the RAs, it seems likely that that person had authority to adjust grievances with regard to such matters.

[15] Though the employees acted without going through their union, that in itself did not deprive the employees of whatever protected status they otherwise would have had. Their action did not so undermine the collective-bargaining status of the Union or bypass established grievance procedures as to lose such protection. Cf. *Emporium-Capwell Co.* v. *Waco*, 420 U.S. 50 (1975). The Union is the Charging Party in this case.

However, in such circumstances I do not believe that employees have a protected right to circumvent their own collective-bargaining representative and take action that would have been against public policy had the collective-bargaining representative engaged in it.[16]

In sum, I find that while the RAs actions were not unlawful, neither were they affirmatively protected by the Act. In these circumstances I find that the RAs' actions with regard to influencing the choice by Respondent of its supervisor were not protected by the Act. However, even if those actions were protected, or if the demonstration had been keyed to such matters as protesting stopped toilets, I do not believe that the finding of a violation would be warranted in the particular situation presented in this case.

A delicate policy matter is presented in this case. Overzealous enforcement of the rights set forth in the National Labor Relations Act could in the circumstances of this case result in an undermining of congressional objectives set forth in the Comprehensive Employment and Training Act (CETA). Where the purposes set forth in two acts of Congress can be in conflict it is incumbent on those interpreting the laws to draw rational lines that will minimize the chance that the two acts are working at cross-purposes. As the United States Supreme Court said in *Southern Steamship Company* v. *N.L.R.B.*, 316 U.S. 31 (1942):

> [T]he Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task.

The D.O.L., pursuant to statutory authority, has undertaken to establish a program under which youths from economically and culturally deprived backgrounds can be trained in the hope that they can break through the barriers of poverty to a fuller life. When they enter the program these youths are generally unemployable high school dropouts. D.O.L. has chosen to pursue its mission through the use of a private contractor, Respondent. The employees of that contractor have important rights relating to their employment relationship with the contractor and those rights are protected under the National Labor Relations Act. The scope of those rights must be evaluated in such a way as to harmonize to the extent possible the public policy that is being effectuated by both the Board and D.O.L. All of the background factors must be considered in attempting to make that accommodation.

In the instant case six RAs and one security officer attempted to make their point with regard to the appointment of a supervisor by inducing approximately 240 corpsmembers to participate in a demonstration against Respondent and to boycott their classes. The boycott of the classes only lasted for a limited time but during that time it completely frustrated the D.O.L.'s program. If the precedent was established that the RAs had the protected right to induce the corpsmembers to leave their classes that right would be existent whether the boycott lasted for part of 1 day or indefinitely. The corpsmembers were not Federal employees nor were they employees of Respondent. They were much more than consumers of Respondent's products. They cannot be equated to the ordinary student in a private academic setting. They were youths for whom D.O.L. undertook a special responsibility.

In the instant case there is no showing that the RAs had any special need to involve the corpsmembers in their dispute with Respondent. The RAs had a collective-bargaining representative but they chose to ignore the normal usages of collective bargaining. One group of RAs, the swing shift RAs, undertook their direct action against Respondent without regard to the wishes of the remaining RAs and without even consulting their Union. The RAs might well have had the right under the National Labor Relations Act to engage in a strike and to picket, even though there would have been an incidental negative impact on the D.O.L.'s program. However, they went well beyond that. They actively induced some 240 corpsmembers to strike directly against the very purpose of that program by absenting themselves from their classes. By using the corpsmembers in such a manner, I believe that the swing shift RAs and the security officer overstepped the bounds of protected activity. I therefore find that the General Counsel has not established by a preponderance of the credible evidence that Respondent violated the Act as alleged in the complaint and I recommend that the complaint be dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The General Counsel has not established by a preponderance of the credible evidence that Respondent violated the Act as alleged in the complaint.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

[16] In *Abilities and Goodwill, Inc., supra*, there was no collective-bargaining agent and the 8(b)(1)(B) issue was not raised in the Board case. However, the First Circuit in denying enforcement stated that "the specific language of the Act recognizes the employer's interest in remaining free of employee interference in managerial decisions regarding the selection of personnel for handling employee grievances."

ORDER[17]

The complaint is dismissed in its entirety.

[17] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.